

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

IRA NICKESON,

Defendant and Appellant.

D039432

(Super. Ct. Nos. SCD149481 &
SCD144986)

APPEAL from a judgment of the Superior Court of San Diego County, Charles R. Gill, Judge. Affirmed.

In superior court case No. SCD144986, Ira Nickeson entered a negotiated guilty plea to transporting methamphetamine (Health & Saf. Code, § 11379, subd. (a)).¹ In superior court case No. SCD149481, he entered a negotiated guilty plea to possessing methamphetamine for sale (§ 11378) with a section 11370.2, subdivision (a)

enhancement based on the section 11379, subdivision (a) offense in case No. SCD144986² and to misdemeanor driving under the influence (Veh. Code, § 23152, subd. (a)). In case No. SCD144986, the court suspended imposition of sentence and placed him on probation, then revoked and reinstated probation, suspending execution of a three-year middle term sentence. In case No. SCD149481, it also placed him on probation, suspending execution of a four-year four-month sentence: the 16-month lower term for possessing methamphetamine for sale, three years for the enhancement, and 180 concurrent days in the sheriff's custody for driving under the influence, with all terms concurrent to the sentence in case No. SCD144986. After Nickeson admitted violating probation, the court lifted the stays on the previously imposed sentences. Nickeson appeals. We affirm.

BACKGROUND AND DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. He presents no argument for reversal, but asks this court to review

¹ All statutory references are to the Health and Safety Code unless otherwise specified.

² The enhancement should have been charged and admitted under section 11370.2, subdivision (c) rather than subdivision (a). Section 11370.2, subdivision (c) provides for an enhancement for a prior section 11379 conviction in the case of a new conviction under section 11378, while subdivision (a) provides for an enhancement for a prior section 11379 conviction in the case of a new conviction under Health and Safety Code sections other than 11378. Both subdivisions, however, specify a three-year enhancement.

the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436.³ Pursuant to *Anders v. California* (1967) 386 U.S. 738, he lists, as possible but not arguable issues, whether Nickeson was eligible for diversion to a drug treatment program under Proposition 36 and whether he was prejudiced by the allegation of a sentencing enhancement under the wrong subdivision of section 11370.2.

We granted Nickeson permission to file a brief on his own behalf. He has not responded. A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738, including the possible issues listed pursuant to *Anders v. California, supra*, 386 U.S. 738, has disclosed no reasonably arguable appellate issues. Nickeson has been adequately represented by counsel on this appeal.

³ Because Nickeson entered a guilty plea, he cannot challenge the facts underlying the conviction. (Pen. Code, § 1237.5; *People v. Martin* (1973) 9 Cal.3d 687, 693.) We need not recite the facts.

DISPOSITION

Judgment affirmed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

NARES, J.